

Case 934: CISG [7 (2); 14 (1)]; 39; [53; 55]; 59; 78

Switzerland: Cantonal Court of the Canton of Valais

C1 06 95

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<http://www.globalsaleslaw.com/content/api/cisg/urteile/1721.pdf>

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The case under consideration concerned legal proceedings brought by an Italian seller of cooking accessories against a hotel business in Valais. The seller sought payment of the sale price of an oven, while the defendant asserted warranty claims.

The court determined the sale price on the basis of the following argument: When a buyer placed an order for goods of a kind that the buyer had never purchased and without any reference to the price, the order constituted an invitation to make an offer and the seller made a proposal to enter into a supply contract. The buyer assented to the offer by accepting the goods, either using them or reselling them. If the seller did not indicate the price of the goods supplied, it was presumed to refer to the price normally charged.

In the present case, the court concluded that the amount claimed by the plaintiff was almost 30 per cent lower than the list price and hence of the market price, so that the sale was deemed to have been concluded at the price thus requested.

The court held that the CISG did not contain any rules on the currency in which payment had to be made or on lawful methods of payment. In the absence of any contractual provisions specifying the currency, that question was governed by national law as determined by the conflict rules. In the light of those considerations, the claim submitted in Swiss francs was granted in euros.

With regard to the warranty claims asserted by the defendant, the court commented on the CISG rules applicable to defect warranties. Its deliberations included a brief analysis of judicial practice on determination of the question of the time limit for giving notice within the meaning of article 39 (1) CISG. However, that analysis was of no specific significance since the court concluded that the defendant had in any event forfeited any defect warranty rights owing to expiry of the two-year period specified in article 39 (2) CISG.

The plaintiff obtained payment of interest on arrears, pursuant to articles 78 and 59 CISG. The amount was fixed in accordance with national law as determined by Swiss private international law.